IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1998

No. 98-593

FILED
OCT 28 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

STATE OF NEW JERSEY,

Petitioner,

v.

SHAWN SMITH,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Respondent, Shawn Smith, asks leave to file the attached Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of New Jersey, without prepayment of costs and to proceed in forma pauperis pursuant to Rule 39. Petitioner has previously been found to qualify for the services of the Office of the Public Defender at every stage of the proceedings in the courts of the State of New Jersey.

Petitioner's affidavit in support of this motion is attached hereto.

IVELISSE TORRES
Public Defender of New Jersey

BY: Mark H. Friedman
MARK H. FRIEDMAN
Assistant Deputy Public Defender

Counsel for Respondent

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1998

No. 98-593

STATE OF NEW JERSEY

Petitioner,

v.

SHAWN SMITH,

Respondent.

AFFIDAVIT

I, Shawn Smith, being duly sworn according to law, depose and say that I am the respondent in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs to give security therefore, I state that because of my poverty I am unable to pay the costs of said case or to give security therefore; and that I believe I am entitled to the redress I seek in this case.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of proceeding in this Court are true.

1. Are you presently employed?

A. No

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest,

dividends or other source?

A. No

3. Do you own any cash or checking or savings account?

A. No

4. Do you own any real estate, stocks, bonds, notes, automobiles or other value property (excluding ordinary household furnishings and clothing)?

A. No

5. List the persons who are dependent upon you for support and state your relationship to those persons.

A. Sheronica Tynes 7 YEARS (Daughter

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Shawn Smith

SHAWN SMITH

Subscribed and Sworn to before

me this 21st day of October, 1998.

Robert Hasanoddin

ROBERT H. HASANODDIN

MY COMMISSION EXPIRES

27 Sept 2001

No. 98-593

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

STATE OF NEW JERSEY, Petitioner,

v.

SHAWN SMITH, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTION PRESENTED

Whether the Supreme Court of New Jersey's fact-specific ruling that a confidential informant's tip, together with some corroboration of the information contained in the tip, did not establish probable cause to justify the search of defendant's person, decided pursuant to a completely literal application of the "totality of circumstances" test set forth in Illinois v. Gates, 462 U.S. 213 (1983), presents any question of sufficient general importance to justify the granting of certiorari?

PARTIES BELOW

Respondent concurs with the statements set forth in the petition.

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Respondent, Shawn Smith, respectfully requests that this Court deny the petition for a writ of certiorari, seeking review of the opinion of the Supreme Court of New Jersey in State v. Smith, 155 N.J. 83, 713 A.2d 1033 (1998).

OPINIONS BELOW

Respondent concurs with the statements set forth in the petition.

JURISDICTION

Jurisdiction of this Court to review the judgment of the Supreme Court of New Jersey is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

Respondent concurs with the statements set forth in the petition.

STATEMENT OF THE CASE[1]

The only "undisputed facts" in this case can be found in the opinion of the New Jersey Supreme Court in Smith, 155 N.J. at 88-91 (Pa 2 to 5). Respondent concurs with the statement of the case in the petition (P 3 to 7) insofar as it reflects that opinion, but we add the following pertinent facts:

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[1] "P ___" will refer to the petition for certiorari. "Pa ___" will refer to the appendix to the petition. Since Appendix C of the petition (Pa 32 to 41) contains only the text of the trial court's ruling on the motion to suppress and omits all of the testimony and the arguments that preceded it, respondent will use the citation form from the state court briefs to refer to the testimonial hearing of October 3, 1994 ("T ___") and the arguments that preceded the trial court's ruling on October 4, 1994 ("P ___") when it becomes necessary to refer to those proceedings.

Contrary to petitioner's suggestion (P 3), it is not an "undisputed fact" that the "black male wearing a three quarter length jacket and a yellow cap" was "selling the drugs as [the informant] spoke [to Detective Hilongos]." While Hilongos did indeed testify that the informant "was saying at that time he was selling narcotics" (T 5-11 to 15), he testified immediately before this that the informant had not told him "at what period of time Shawn Smith had been selling" (T 5-3 to 10). Although the Appellate Division's opinion hazarded the guess that "the gist of the conversation was that the drug transactions were taking place while the informant was talking and that the informant was actually witnessing the illegal sales" (Pa 20), the facts are that neither the New Jersey Supreme Court (Pa 2) nor the trial court (Pa 33) found as a fact that the suspect was in fact "selling the drugs as they spoke."

Petitioner correctly states that the trial court ruled that "the initial seizure of the keys from defendant's person [was] an unlawful search [but] found that the keys would have been inevitably discovered..." (P 5). Petitioner fails to mention that the prosecutor who represented the State in the trial court conceded on two occasions that "the officer didn't have probable cause to search the defendant at the time of the initial stop" (T 20-19 and 78-22 to 23), and that the claim that he did have probable cause to arrest defendant was not made until the case was appealed. Respondent raised the issue of whether the petitioner should be held to this concession throughout the

course of the appeal, but the New Jersey Supreme Court did not address it, preferring to reverse on the merits.

Finally, petitioner's statement that the New Jersey Supreme Court held that the information possessed by the police was "insufficient to satisfy the totality of the circumstances test and establish probable cause justifying the warrantless arrest of defendant" (P 6, emphasis added) is not quite accurate. In fact, the Court ruled that petitioner could not rely on the "search incident to arrest" doctrine to uphold the police action because there was "no evidence that Hilongos had a subjective intent to arrest Smith when he stopped and subjected him to a search" (Pa 6). What the Court actually ruled was that under the totality of the circumstances test enunciated by this Court in Illinois v. Gates, 462 U.S. 213 (1983), "Hilongos did not have probable cause when he searched defendant" (Pa 6 and 14).

REASONS FOR DENYING THE WRIT

Petitioner's arguments are nothing more than an ill-disguised attempt to transform a conventional, completely fact-specific application of the Gates test into a constitutional controversy. From the outset, the New Jersey Supreme Court made it clear that the "specific issue [in this case] is whether a confidential informant's tip, together with some corroboration of the information contained in the tip, established probable cause to justify the search of defendant's person" (Pa 2). That the Court intended to perform the modest task of applying Gates to specific factual contexts is made evident in the summary of their

analysis set forth in State v. Zutic, 155 N.J. 103, 110-111, 713 A.2d 1043 (1998), the companion case to Smith:

> We begin with a brief recapitulation of the analysis of the totality of the circumstances. Hearsay may constitute probative evidence of probable cause "so long as a substantial basis for crediting the hearsay is presented." [Citations omitted]. An informant's "veracity" and "basis of knowledge" are two highly relevant factors under the totality of circumstances. [Citations omitted]. A deficiency in one of those factors "may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." [Citations omitted]. An informant's veracity may be established in a variety of ways..For example, the informant's past reliability will contribute to the informant's veracity. {Citations omitted]. With regard to the informant's basis of knowledge, if the informant does not identify the basis of knowledge, a reliable basis of knowledge may nonetheless be inferred from the level of detail and amount of hard-to-know information disclosed in the tip. Smith, supra, 155 N.J. at 95, 713 A.2d 1039 [Pa 9]. Finally, independent corroboration of hard-to-know detail in the informant's tip may also greatly bolster the tip's reliability. Id. at 95, 713 A.2d 1040 [Pa 10].

The application of the Gates test to the facts of this case also did not break any new ground, and was never intended to (Pa 14 to 15):

> In sum, we conclude that in the totality of the circumstances, Hilongos did not have probable cause when he searched defendant. although the informant's veracity is bolstered by one prior occasion of reliability, doubts concerning potential ulterior motives must remain. Also, the easy-to-know detail in the tip did not imply a reliable basis of knowledge. Finally, the police corroboration of that easy-to-predict detail did not bolster the informant's reliability

> in respect of the allegation of criminal activity. Taken as a whole, these circumstances did not amount to probable cause. Therefore, the personal search of defendant and seizure of the keys from defendant were unlawful.

In the face of the New Jersey Supreme Court's repeated insistence that it recognized and applied the doctrine that "the sufficiency of the information related by an informant as a basis for establishing probable cause is determined by a standard that calls for consideration and analysis of all relevant circumstances" (Pa 7), petitioner futilely tries to conjure up a constitutional issue worthy of this Court's consideration by ripping isolated sentences or even mere phrases out of context to cobble together "a dramatic departure from the flexible 'totality of the circumstances' approach [of Gates]" (P 8) that was never accomplished or even intended. Once the language petitioner relies on to give the appearance of "important law enforcement issues" (P 7) are restored to their proper context, it becomes evident that this Court is presented with nothing more than a "probable cause determination ... governed by the totality of circumstances test from ... Gates...." Zutic, 155 N.J. at 110.

Petitioner's first claim is that the New Jersey Supreme Court "asserts that corroboration is an independent prong which must be satisfied in each case" and thus "ignored [a] fundamental aspect of this flexible test" (P 10). The only portions of the opinion below that petitioner can point to as support for this sweeping assertion are isolated sentences in which the Court said that "corroboration is an essential part of the determination of

probable cause. Independent corroboration is necessary to ratify the informant's veracity and validate the truthfulness of the tip" (Pa 10). When read in the context of the entire opinion, however, it is evident that the key words in that quote are not "essential" or "necessary," but, rather, are "the determination of probable cause." What the Court was saying was not that corroboration had to be present in every case in order for it to find probable cause, but that the presence and quality of the corroboration had to be considered when applying the "totality of circumstances" test. The Court made this clear later in the opinion when it discussed the facts of the instant case (Pa 13, emphasis added):

> The evidentiary weakness of the basis-of-knowledge factor under the totality of the circumstances test goes only to the weight and does not as such necessarily establish the absence of probable cause. Even where the tip lacks sufficient detail to establish a basis of knowledge, independent police investigation and corroboration of the detail in the tip must be considered because it may in some circumstances add to the evidentiary weight of facts as well as the overall circumstances.

This approach to the importance of including corroborating information in the overall "totality of the circumstances" test is the mirror image of this Court's own opinion in Gates, 462 U.S. at 241, that "[o]ur decisions applying the totality-of-the-circumstances analysis ... have consistently recognized the value of corroboration of details of an informant's tip by independent police work."

Contrary to the image that petitioner is trying to convey, the New Jersey Supreme Court did not hold the search of respondent invalid because it was devoid of any corroboration. The very first paragraph of the opinion acknowledges that there was "some corroboration of the information contained in the tip" (Pa 2), but after careful analysis it ultimately concluded that "corroboration only of the suspect's description and location did not bolster the tip's reliability or add to its weight" (Pa 13). That petitioner does not agree with this analysis is no justification for the misleading characterization of the New Jersey Supreme Court's holding as being "that corroboration of an informant's tip is a per se requirement to establish probable cause" (P 10).

Nor is it in any way accurate for petitioner to assert that the Court below held "that such corroboration cannot be of innocent details, but is restricted to suspicious actions" (P 13 and 15). Again, petitioner's evidence is a single quotation, taken out of context, that noted that "the police corroboration did not include the observation of any suspicious drug transaction or criminal activity," along with a similar reference to "suspicious detail" in Zutic, 713 A.2d at 1048 (P 12). Neither in these quotes nor in any other portion of the opinions below can an unbiased reader find any disagreement that "corroboration of innocent details can help to establish probable cause" (P 13). What the Court below was saying in the sentences quoted by petitioner, as it was saying throughout the opinion, was that

corroboration of easy-to-know detail like clothing or past movements cannot alone corroborate the claim that a suspect is engaging in criminal activity:

> The police corroboration only of the suspects's description and location did not bolster the tip's reliability or add to its weight. The informant could have easily known defendant's description and location without being privy to criminal activity, and police corroboration of that neutral information does not alone or with all the surrounding circumstances suggest that defendant was engaged in criminal activity.

(Pa 13 to 14, emphasis added). The New Jersey Supreme Court's belief that it is "police corroboration of hard-to-know predictive detail" that generates "a strong inference that the informant was not fabricating the story" once again mirrors this Court's belief that corroboration under the "totality of circumstances" test should include "details relating not just to easily obtained facts and conditions existing at the time of the tip, but to future actions of the parties ordinarily not easily predicted." Gates, 462 U.S. at 245.

Petitioner also pounces on the New Jersey Supreme Court's isolated comments that "a few past instances of reliability do not conclusively establish an informant's reliability" (Pa 8) and that "without more information relating to the informant's history or motives, the information does not firmly establish his truthfulness in this case" (Pa 11) as the excuse for arguing that the Court below "indicated that the degree of evidence concerning the reliability of an informant is now more demanding" than that ordinarily considered sufficient under Gates and its progeny (P

17 to 18). Once again, examination of the Court below's analysis of the "veracity" factor to the facts of the case at bar reveals a straightforward application of the "totality of circumstances" test with full appreciation of its flexible nature:

> In applying this analysis to the facts of this case, we may conclude that there was some evidence of the informant's veracity. Hilongos stated he believed the informant to be reliable because "[h]e did a job for me in the past." Under Aguilar/Spinelli,[2] a single instance of past reliability would have been sufficient evidence of the veracity factor. [Citations omitted]. However, under the totality of the circumstances test, we must determine how much weight to give the informant's veracity in reaching the ultimate determination of probable cause. As to its weight, the recitation in the tip reveals little about Hilongos's informant other than that the informant had been reliable once previously in a case that led to a conviction. [Citation omitted]. While that information increases the likelihood that the informant was being truthful and possessed the necessary veracity, without more information relating to the informant's history or motives, the information does not firmly establish his truthfulness in this case.

(Pa 11, emphasis added). In other words, the New Jersey Supreme Court has recognized that establishing "veracity" does not per se "conclusively establish" the reliability of the tip (Pa 8) under the "totality of the circumstances" test if the "basis of knowledge" disclosed in the tip is "such that it can be readily inferred that the informant was not an insider or a person especially close to defendant or directly aware of the criminal activities ascribed to defendant" (Pa 12) and when the only

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[2] Aguilar v. Texas, 378 U.S. 108 (1984); Spinelli v. United States, 393 U.S. 410 (1969).

corroboration of the tip was that "the police only briefly observed defendant standing alone outside the building" (Pa 13). Such an all-encompassing evaluation of all of the facts is far more faithful to the "totality of the circumstance" test than is petitioner's apparent belief that to establish an informant's "veracity" is to establish a tip's "reliability" without any further proof being necessary.

Asking this Court to act as a court of errors that reviews factual disputes, petitioner claims that the "existence of probable cause to arrest defendant ... was nothing less than patent" (P 19) and that this Court should "affirm the Appellate Division's unanimous finding of probable cause to arrest defendant and to conduct a search of his person incident to his arrest" (P 20). If this represents petitioner's best effort to convince this Court that the instant matter is a fitting vehicle for examination of so-called "important law enforcement issues" (P 7), than it must be dismissed as a failure because it ignores critical facts found by the courts below and invents others more to petitioner's liking. First, so far from "patent" was the existence of probable cause to arrest in this matter that petitioner's own representative in the trial court conceded on two occasions that it had not been established (T 20-19 and 78-22 to 23). Second, although the New Jersey Supreme Court recognized that "probable cause to arrest is the functional equivalent of probable cause to search," it found that the search of respondent could not be justified under a "search incident to arrest" theory

because "[t]here is no evidence that Hilongos had a subjective intent to arrest [respondent] when he stopped and subjected him to a search" (Pa 6). Third, no court in a position to decide the facts ever found that the police had corroborated the informant's claim that respondent was "located at 400 Irvington Avenue," or that he was "apparently using the lobby of that building," or that he was "using a red two-door Datsun" (P 19). Instead, the New Jersey Supreme Court either made or endorsed findings that completely gut petitioner's claim that probable cause to either search or arrest respondent ever existed:

> The police corroborated defendant's description and approximate location, but the evidence does not support the finding that they corroborated the modus operandi or the use of the Datsun. When making its factual findings, the trial court acknowledged, "The State concedes that other than seeing a man dressed as indicated in the tip, the police did nothing to corroborate any other information because it was 'not feasible.'" That finding is supported by the record. To the extent that the tip described a modus operandi, it alleged that the suspect would be meeting with people and going back and forth between the lobby and apartment #2L. Rather than corroborate that information, the police only briefly observed defendant standing alone outside the building. Also, Hilongos testified that he could not remember if he saw the Datsun before or after he searched defendant. Moreover, the police corroboration did not include the observation of any suspicious drug transaction or criminal activity. The police corroboration only of the suspects description and location did not bolster the tip's reliability or add to its weight.

(Pa 13). The above-quoted findings must be accepted by this Court because "a reviewing court should take care both to review

findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers."[3] Ornelas v. United States, 517 U.S. 690, 699 (1996).

The smattering of out-of-state cases relied on by petitioner to support the claim that an informant's tip can ripen into probable cause for a search and/or arrest simply by police observations of clothing that matches the informant's description (P 22 to 23) does nothing more than validate this Court's belief "that because the mosaic which is analyzed for a ... probable-cause inquiry is multi-faceted, 'one determination will seldom be a useful "precedent" for another...." Ornelas, 517 U.S. at 696, quoting from Gates, 462 U.S. at 238 n. 11. The cases cited all have two factors that rendered those informants' "basis of knowledge" far more convincing than that in the case at bar.

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[3] Petitioner criticizes the New Jersey Supreme Court for supposedly "ignor[ing] the testimony of Detective Hilongos that he knew the neighborhood, and that very building, to be rife with drug sales" (P 20 n. 5). It is petitioner, however, who conveniently ignores that Court's finding that "there was no suggestion that Hilongos used his experience to infer that defendant was selling drugs. The only observation Hilongos made was of defendant standing on the sidewalk wearing a coat and a yellow cap. His experience did not lead him to believe that such a person was engaged in criminal activity" (Pa 14). Furthermore, to allow Hilongos' past experiences in Oakwood Terrace to serve as corroboration for a tip involving a person whom he did not know even lived in that complex or building would fly in the face of this Court's long-standing view that "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person. [Citation omitted]. Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person." Ybarra v. Illinois, 444 U.S. 85, 90 (1979).

First, the informants accurately reported that the suspects were carrying the drugs on their persons or in automobiles in which they were travelling; and second, the suspects were promptly discovered by the police in exactly the location that the informants said they would be.[4] They also feature informants

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[4] United State v. Rucker, 138 F.3d 697, 700-701 (7th Cir. 1998) (Officer, who knew defendant and his criminal history, acted on reliable informant's tip when the "modus operandi (carrying the drugs in an oversized shoe) described to him by the informant was the modus operandi used by Mr. Rucker in his earlier encounter with the police...."); United States v. Lincoln, 992 F.2d 356, 357-358 (D.C. Cir. 1992) ("reliable informant's detailed and corroborated reports" about car, its occupants, and the name on the vehicle registration, coupled with furtive gestures by the suspects); United States v. Abadie, 879 F.2d 1260, 1263 (5th Cir. 1989) (detailed description "of how the drug transaction would be handled" from active undercover informant, with corroboration of individual's appearance, vehicle, future movements, and bag in which cocaine was found). United States v. Marbury, 732 F.2d 390, 397-398 (5th Cir. 1984) (affidavit for warrant to search for stolen vehicles passes muster "by the barest of margins" because a "second tip" from an informant corroborated "first tip" by "a citizen who is known to affiant to be reliable and honest"); Thomas v. State, 208 Ga. App. 476, 430 S.E.2d 849, 851 (1993) ("the informant in this case had been reliable on several occasions in the past"); Pattman v. State, 431 S.E.2d 706, 717 (Ga. App. 1993) (informant "had within the prior three weeks provided Officer Graham with information which led to the arrests of five or six persons" for drugs, besides which the officer knew the suspect, who fled when he saw him, by his street name); State v. Bell, 482 So.2d 11, 12-13 (La. App. 1985) (informant had provided the officer with "information which in the past led to 'maybe' ten arrests and 'probably' five convictions [and] the informant had never provided him with any wrong information," coupled with the fact that the suspect made several furtive gestures); People v. Darden, 34 N.Y.2d 177, 313 N.E.2d 49, 51 (1974) (corroboration of reliable informant's prediction of carrier's appearance, attache case, and travel plans comparable to that contained in Draper v. United States, 358 U.S. 307 (1959). In two cases, the reviewing courts did not hold that the police had probable cause for an arrest or search incident to arrest; they held only that the informant's tip plus the description justified an "investigative stop of the black Buick Electra" (State v. Robinson, 342 So.2d 183, 186-188 (La. 1977)) or that the anonymous tip concerning a concealed weapon justified a "limited, pat-down search for the purpose of protecting

(continued...)

whose "track records" greatly exceed that of the person in this case both in quantity and in quality (i.e., specific information regarding narcotics activities as opposed to unrelated crimes).[5] Petitioner's lengthy description (P 21 to 22) of State v. Butler, 655 So.2d 1123, 1130-1131 (Fla. 1995), for example, fails to account for the following language in the case:

> In this case, we have an informant whose veracity (i.e., credibility and reliability) is unquestioned. Officer Putnam had used information from this informant at least 20 times, and 60 to 70% of the tips resulted in felony arrests. As the district court acknowledged, the informant's reliability is "fairly well established" .... We agree there is a "strong showing" in support of the informant's veracity.

Id. at 1130, emphasis added. Since the informant in this case did not have nearly the kind of long-and-strong track record that figured so prominently in these other cases, both the trial court

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[4](...continued)
investigating officers and the public" (State v. Hasenbank, 425 A.2d 1330, 1334 (Me. 1981).

[5] United States v. Ayers, 924 F.2d 1468, 1478 (9th Cir. 1991) ("the affidavit detailed the informant's prior activities in connection with the police, including participating in approximately 15 to 18 controlled buys of contraband under the direction of officers from the Contra Costa County Sheriff's Department and the San Pablo Police Department"); Turner v. United States, 588 A.2d 280 (C.A.D.C. 1991) ("reliable tips on approximately ten occasions which resulted in three 'good' search warrants and several arrests"); Jefferson v. United States, 476 A.2d 685, 687 (C.A.D.C. 1984) ("information on at least nine occasions, and on each of these occasions the information led to the arrest and the recovery of narcotics"); But see State v. Ruffin, 448 So.2d 1274, 1278-1279 (La. 1984) (informant's track record of "supplying credible information leading to over fifty arrests resulting in thirty to forty conviction" not enough to justify warrantless arrest when only corroboration of tip was that suspect was standing on the corner where informant said he would be found).

and the New Jersey Supreme Court had the right to insist on a commensurately stronger showing of corroboration of the informant's tip before finding that this "deficiency [in the informant's relative reliability was] compensated for" sufficiently to find that probable cause had been established. Gates, 462 U.S. at 233.

Finally, realizing that all else has probably failed, petitioner uses the conclusion of the petition to make an emotional appeal implying that this Court would be less than "serious about enforcing drug trafficking laws" unless it rules that the "war on drugs" so overwhelms the rights of citizens under the United States Constitution that it requires that police be given virtual carte blanche to search or seize anyone who seems to be the subject of a tip as long as the informant has provided any useful information in the past, no matter how generic the informant's description or how otherwise lawful the suspect's conduct may appear to be (P. 24, quoting from United State v. White, 648 F.2d 29, 43-44 (D.C. Cir. 1981), cert. den. 454 U.S. 924 (1981)). Thankfully, this Court has already acknowledged that petitioner's theory is abhorrent in a free and civilized society. In Richards v. Wisconsin, 520 U.S. 385, 117 S.Ct. 1416 (1997), this Court reviewed a decision by the Wisconsin Supreme Court that created a blanket exception to the "knock-and-announce" rule of Wilson v. Arkansas, 514 U.S. 927 (1995) for felony drug investigations. See State v. Richards, 201 Wis.2d 839, 549 N.W.2d 218 (1996). The Court rejected such a

blanket exception because it "contains considerable overgeneralization" and because the "reasons for crating an exception in one category can, relatively easily, be applied to others." Richards, 117 S.Ct. at 1421; see also Mincey v. Arizona, 437 U.S. 385 (1978) (rejecting a blanket exception to the exclusionary rule for warrantless investigations of murder scenes). Petitioner's attempt to raise "the critical role played by informants in crime detection" above all competing considerations makes the following portion of Richards more relevant than ever:

> It is always somewhat dangerous to ground exceptions to constitutional protections in the social norms of a given historical moment. The purpose of the Fourth Amendment's requirement of reasonableness "is to preserve that degree of respect for the privacy of persons and the inviolability of their property that existed when the provision was adopted -- even if a later, less virtuous age should become accustomed to considering all sorts of intrusion 'reasonable.'" Minnesota v. Dickerson, 508 U.S. 366, 380...(1993) (SCALIA, J., concurring).

117 S.Ct. at 1421 n. 4. In summary, no valid reason exists either in fact or law to justify this Court's consideration of the instant case.

CONCLUSION

For all the aforementioned reasons, it is respectfully urged that petitioner has failed to raise any substantial constitutional questions, and, therefore, that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

IVELISSE TORRES
Public Defender
Attorney for Respondent

BY: Mark H. Friedman
MARK H. FRIEDMAN
Assistant Deputy Public Defender

Of Counsel and On the Brief

Dated: October 27, 1998